IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 187 OF 2004

Shri Jose Gomes,
son of Manuel Gomes,
major, married, Indian
National, teacher,
resident of Shiroda,
Ponda, Goa. ... Applicant

versus

State(Panaji Town Police
Station) ... Respondent

Mr. S. G. Dessai, Senior Advocate with Mr. Nitin P.Purushan, Advocate for the Applicant.

Mr. S. N. Sardessai, Public Prosecutor for the State.

CORAM : N. A. BRITTO, J.

DATE : 26TH AUGUST,2004.

ORAL ORDER

The Applicant herein is accused in Crime No.158 of 2004 under Sections 406 and 427 of the Indian Penal Code.

2. The allegation against the Accused is that the Accused being a teacher and having been entrusted with examination of answer papers, the Accused interchanged pages 03 to 18 of the answer book of the student having seat No.61506 with the answer book of the student having seat No.58738 in the subject of Computer Commercial Application and Networking of

Computer Technique course conducted by the Goa Board of Secondary Education in the month of March, 2003 and thereby committed the said offence.

3. The case came to light when the candidate having seat No.61506 applied for verification of her marks and it was noticed that pages 03 to 18 of her answer book did not belong to her and further enquiries revealed that pages 03 to 18 of the answer book of seat No.61506 were exchanged with the answer book of seat No.58738. Thereafter, a Sub-Committee was appointed by the Board and the said Sub-Committee came to the conclusion that the Accused herein was involved in the swapping of the said pages. Thereafter, a complaint was filed on 10/11th March, 2004, against the Accused by the Secretary of the said Board which was received at Porvorim Police Station on 14th March, 2004 but the F.I.R. was registered on or about 6th August, 2004.

4. The Accused alleged that on 9th August, 2004, a Police messenger from Shiroda Out-Post came in search of him and left a message that he was required by Panaji Town Police Station and that he should report there at 12.00 noon.

5. On the same day, the Accused approached the Sessions Court, Panaji, with an application for

Anticipatory Bail which was rejected by the learned Sessions Judge, Panaji, on 16th August, 2004.

6. Thereafter, the Accused approached this Court on 19th August, 2004 with a Criminal Revision Application which was disposed off on 24th August, 2004, as not maintainable.

7. The Accused has now filed an application for Anticipatory Bail to this Court dated 25th August, 2004, notice of which was given to the Respondent.

8. At the time of hearing of the application, Mr. S. G. Dessai, learned Senior Counsel on behalf of the Applicant/Accused has submitted that the presence of the Accused is not at all required in custody because there is nothing to be recovered from the Accused and also because the enquiry against the Accused was completed by the Sub-Committee set up by the Board long time ago.

9. Mr. S. N. Sardessai, learned Public Prosecutor on behalf of the State has left the matter of granting the Anticipatory Bail to the discretion of this Court.

10. Admittedly, at no point of time the Investigating Officer showed any inclination to arrest the Accused and interrogate him in custody. As already stated, the F.I.R. filed against the Accused was received at Porvorim Police Station on 14th March, 2004 and although, the F.I.R. itself was registered on 6th August, 2004, the Accused was not sought to be arrested from 6th August, 2004 to 9th August, 2004 and again from 16th August, 2004 to 19th August, 2004 and again thereafter and this only shows that the Investigating Officer is not serious in arresting the Accused and interrogating him in custody. After all that is his discretion. That apart, the facts also do not justify custodial interrogation of the Accused and hence, this would be a fit case to admit the Accused to Anticipatory Bail, but with conditions.

11. Consequently, I allow the application and order that in the event of the arrest of the Accused, he shall be released on Bail upon execution of a Bond of Rs.15,000/- with one surety in the like amount to the satisfaction of the Investigating Officer and with a further condition that the Accused shall attend before the Investigating Officer for completion of

investigations for a period of four days from tomorrow between 3.00 p.m. to 6.00 p.m.

Copy of the Order duly authenticated by the Court Superintendent be given to the parties.

N. A. BRITTO, J.

RD.